

Plaintiff's Name DARRELL COURTNEY
 Inmate No. J- 94495
 Address PO. BOX 290066
REPRESENT, CALIFORNIA 95671

1 ST

AMENDED
 COMPLAINT

RECEIVED

MAY - 1 2008

RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

DARRELL COURTNEY
 (Name of Plaintiff)

vs.

R. MOUSER Correctional
AI Officer
J. JOHNSON, Correctional
Officer
 (Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes No ✓

B. If your answer to A is yes, how many? NONE
 Describe previous or pending lawsuits in the space below.
 (If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff N/A

Defendants N/A

2. Court (if Federal Court, give name of District; if State Court, give name of County)

N/A

3. Docket Number N/A 4. Assigned Judge N/A

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

N/A

6. Filing date (approx.) N/A 7. Disposition date (approx.) N/A

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

- A. Defendant R. MOUSER & J. JOHNSON is employed as CORRECTIONAL OFFICERS
at PELICAN BAY STATE PRISON
- B. Additional defendants (WRITTEN UP TO BOTH DEFENDANTS)
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-

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

ON 8-15-07 AT APPROXIMATELY 6:30 AM
 CORRECTIONAL OFFICER MOUSER AND CORRECTIONAL OFFICER J. JOHNSON
 WAS CONDUCTING THEIR DUTIES, FEELING THE UPPER TIER, WHEN
 C/O R. MOUSER REACHED MY CELL DOOR (# ASKED HIM, WHAT WE'RE
 WE HAVING?) OFFICER MOUSER SUDDENLY BECAME ENRAGED, AND PRO-
 CEDDED TO THROW MY BREAKFAST MILK THREW THE TRAY PORT.
 OFFICER R. MOUSER THEN BEGAN TO REACH THREW MY TRAY PORT
 GRABBING ME BY MY SHIRT OFFICER J. JOHNSON THEN PROCEEDED
 TO ASSIST HIM IN HIS ASSAULT AGAINST ME, CAUSING ME TOO
 BE STRATCHED ON MY STOMACH LEAVING A LONG SCAR ACROSS MY
 STOMACH, CAUSING ME TO HAVE TO BE SEEN BY NURSING STAFF (SEE 7219.)

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

FOR USE OF EXCESSIVE FORCE, I, D. CLOUTNEY ASK FAIR
 MONETARY, PUNITIVE AND DECLARATORY DAMAGES IN THE
 SUM OF \$200,000.00 IN MONETARY DAMAGES AND \$5,000.00
 IN PUNITIVE DAMAGES, AND \$5,000.00 IN DECLARATORY DAMAGES
 ALSO A DEMAND FOR A TRIAL BY A JURY.

I declare under penalty of perjury that the foregoing is true and correct.

Date 4-24-08

Signature of Plaintiff D. Cloutney

(revised 9/17/03)

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes No

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes No

If your answer is no, explain why not FULL EXHAUSTION OF ADMINISTRATIVE REMEDIES ARE STILL IN PROGRESS. PER. Booth v. Churner 532 U.S. 731, 741 (2001) AND SEE ALSO MCKINNEY v. CAREY 311 F.3d 1198, 1999 (9th Cir. 2002)

C. Is the process completed?

Yes If your answer is yes, briefly explain what happened at each level.

PROCESS IN FULL IS INCOMPLETE, SECOND LEVEL RESPONSE PENDING

No If your answer is no, explain why not.

N/A

NOTICE:

Pursuant to the Prison Litigation Reform Act of 1995, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit. Booth, 532 U.S. at 734.

DARRELL COURTNEY

CSP-SAC

P.O. BOX 290066

REEDSBURG, CA 95671

WRIT OF CERTIORARI

UNITED STATES DISTRICT COURT
OF NORTHERN CALIFORNIA

DARRELL COURTNEY

PLAINTIFF,

CASE NO. CV-08-1791

vs.

CORRECTIONAL OFFICERS

R. MOUSER & J. JOHNSON

DEFENDANTS.

DEMAND FOR JURY TRIAL

BY

PLAINTIFF.

I (come) now a Plaintiff in the above and entitled to this court. My complaint is Correctional Officers R. Mouser and J. Johnson of PELICAN BAY STATE PRISON, for USE OF EXCESSIVE FORCE.

I HAVE FILED TWO INMATE / PAROLEE APPEALS, AND TO NO AVAIL, PELICAN BAY APPEALS COORDINATOR REFUSES TO RESPOND TO my complaint against its STAFF MEMBERS.

And According To Booth V. Churner, 532 U.S. 731, 739 12
 S. Ct. 1819, 149 L.Ed.2d 928 (2001) But what CAN BE
 DONE IF THE PETITIONER /PLAINTIFF ISN'T ALLOWED TO FULL
 EXHAUST HIS ADMINISTRATIVE REMEDIES? And YES, its
 WELL KNOWN THAT Proper Exhaustion demands compliance
 WITH CDCR AND OTHER CRITICAL PROCEDURAL RULES BECAUSE NO
 ADJUDICATIVE SYSTEM CAN FUNCTION EFFECTIVELY WITHOUT IMPISING
 SOME ORDERLY STRUCTURE OF, OR ON, THE COURSE OF ITS PROCEED-
 - S. BUT WHAT CAN ONE DO WHEN THE RESPONDANTS (choose
NOT! TO RESPOND)? AND WHILE THE ADMINISTRATIVE
 PROCESS GIVES THE PRISON (PRSP) THE OPPORTUNITY TO
 CORRECT THEIR OWN ERRORS, THEY, (PBSP) FAIL TO ANSWER
 THE PLAINTIFF'S COMPLAINTS. THE PLAINTIFF FEELS THAT THE
 RESPONDANT ARE FLAGRANTLY ABUSING THIS OR THEIR APPEALS
 PROCESS, INVADING THE COMPLAINANT TO EXHAUST HIS ADMINI-
 - STRATIVE REMEDIES, WHICH BRINGS DISCRIMINATION INTO THIS
 PICTURE. THE PLAINTIFF BELIEVES THAT THE RESPONDANTS
 ARE PURPOSELY TRYING TO CIRCUMVENTING MY APPEALS
 BECAUSE I'VE NOW BEEN TRANSFERRED TO CSP-SAC FROM
 PELICAN BAY STATE PRISON. IN CLOSING, IT IS THE WISH OF
 THE PLAINTIFF TO HAVE MATTER PRESENTED TO A
 JURY OF HIS PEERS.

I HEREBY SWEAR UNDER THE PENALTY OF PERJURY THAT
 THE FOREGOING IS TRUE AND CORRECT AS I KNOW
 THEM TO BE.

Signed:
Dwight Courtney

Date: "4-21-08
~~4-16-08~~